

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISCTRICT OF PUERTO RICO**

JOSEPH KLEIN

Plaintiff

vs.

ESJ RESORT, LLC., JOHN DOE  
JOHN DOE; AND ABC INSURANCE  
COMPANY

Defendants

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**CIVIL NO.**

**PLAINTIFF DEMANDS  
TRIAL BY JURY**

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**COMPLAINT**

**TO THE HONORABLE COURT:**

**COMES NOW** plaintiff **JOSEPH KLEIN**, through the undersigned attorney,  
and very respectfully submit their Complaint:

**I. JURISDICTION AND PARTIES**

1. Jurisdiction exists pursuant to 28 U.S.C. 1332, in that Plaintiff is a citizen of the State of New York; Defendant ESJ Resort, LLC., ("ESJ") is a limited liability company organized under the laws of the State of Delaware, whose sole member is ESJ Resort Mezz Borrower, LLC, also a Delaware limited liability company; Defendant John Doe is the fictitious name of a natural person or legal entity domiciled, organized and/or with a principal place of business in a state other than the State of New York; Defendant ABC Insurance Company is an insurance company, organized and/or with a principal place of business in a state other than the State of New York; and the amount in controversy in each

claim exceeds the sum of **SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00)**, exclusive of interest and costs.

2. Venue exists in this District in that the requirements of 28 U.S.C. § 1391 are met, since “a substantial part of the events giving rise to the claim occurred” in the Commonwealth of Puerto Rico.

3. Plaintiff Joseph Klein is of legal age, a certified public accountant and a resident of the State of New York. Mr. Klein’s postal address and telephone number are the following:

15 Oak Street

Woodmere, NY 11598

Tel. (347)399-9763

4. At all times hereinafter mentioned, defendant ESJ is the entity that owns, operates and/or manages the hotel known as the “El San Juan Hotel & Casino”, located in Isla Verde, PR.

5. Defendant John Doe, is the fictitious name of any person or entity that owns, operates and/or manages the hotel known as the “El San Juan Hotel & Casino”, located in Isla Verde, PR.

6. Defendant ABC Insurance Company is the fictitious name of the insurance company which at time of the facts alleged herein had issued and maintained in full force and effect an insurance policy on behalf of defendants ESJ and/or John Doe which provides defense and coverage for the facts alleged

herein. Once its true name and identity are known, the corresponding amendment to the Complaint will be made.

## **II. FACTS**

7. On August 3, 2021, Mr. Klein was a paying guest of the El San Juan Hotel & Casino. At about 3:00 p.m. of said date, Mr. Klein returned in his rented vehicle to the “El San Juan Hotel & Casino” and proceeded to park in a shady spot close to the hotel’s main circular driveway, next to a tree which was planted on an island.

8. After Mr. Klein reversed the vehicle into the parking spot, he proceeded to exit the vehicle by placing his left foot on what he believed would have been the cement curb which surrounds the island where the tree had been planted but, the tree’s roots have overgrown in such a manner that they had overgrown the cement and its yellow safety painting was no longer visible from the position in which Mr. Klein sat in his vehicle.

9. As he stepped on what he believed would have been the curbside and proceeded to stand up from the vehicle’s seat, his foot was caught on an even web of tree roots and threw him off balance as he placed the weight of his body on it. He then tried to backpedal to regain his balance took a step backwards and fell off the curb, causing him to twist his ankle and then he heard a sharp snap in his foot.

10. Immediately thereafter he felt sharp pain in his left foot/ankle, limped to the valet parking attendant just a few feet away from. He reported his

accident to attendant, who summoned for assistance, as his ankle was already swelling. His ankle was immobilized with an ace bandage, and he spent the rest of the day at his room, as he was unable to place any weight on his foot. He also completed the incident report requested by the hotel, a copy of which was never provided to him, notwithstanding representations to the contrary.

11. The next day, August 4, he mostly spent his time laying down outside, as he was unable to walk. He was later provided with a cane by the hotel's personnel.

12. On August 5, Mr. Klein was still in considerable pain and unable to walk, a wheelchair was provided during the checkout process and to transport him to the taxicab for the airport.

13. Immediately returning to his home, Mr. Klein visited an orthopedic surgeon, Dr. David Zaret, who took x-rays, revealing a fracture of the left cuboid. His left foot was immobilized with an orthopedic boot for 6 weeks.

14. During the initial convalescing period, Mr. Klein's condition was complicated by what was diagnosed as "mid to proximal posterior tibial venous thrombosis", a condition that is not only life threatening, but causes considerable pain. He had to seek medical treatment from a hematologist for this painful and life threatening condition.

15. During the first week of convalescence Mr. Klein was mostly in severe pain and confined at home. Gradually during the following weeks his condition began to improve, and he slowly was able to move with severe

limitations. Because of his physical condition and resulting pain, Mr. Klein was unable to work during the initial weeks of his convalescence.

16. As weeks passed and the boot was removed, Mr. Klein began to receive physical therapy two or three time per week, treatment which he continues to receive. Nevertheless, his physical activities remain limited, as he is still unable to jog. It is likely that Mr. Klein will remain some degree of impairment in his left foot, which will adversely affect his daily living activities.

## **II. LIABILITY**

17. The injuries suffered by Mr. Klein on August 3, 2021, were proximately caused by the defendants' negligence, who at the time of the occurrence of the facts alleged herein failed to maintain the premises of parking lot of the El San Juan Hotel & Casino in a reasonably safe condition for the use of its customers and visitors.

18. The injuries suffered by Mr. Klein on August 3, 2021, were proximately caused by the defendants' negligence, who at the time of the occurrence of the facts alleged herein failed to properly trim and maintain the roots of the trees planted in the island next to the parking were Mr. Klein parked, an area that it is foreseeable that people would be required to step on upon exiting a parked vehicle.

19. The injuries suffered by Mr. Klein on August 3, 2021, were proximately caused by the defendants' negligence, who at the time of the occurrence of the facts created, maintained, and tolerated a safety hazard within

the premises of the parking, such as overgrown roots over the curbside next to the parking lot in question, an area that it is foreseeable that people would be required to step on upon exiting a parked vehicle.

20. The injuries suffered by Mr. Klein on August 3, 2021, were proximately caused by the defendants' negligence, who at the time of the occurrence of the facts created, maintained, and tolerated a safety hazard detrimental to the well-being of visitors and patrons, such as overgrown roots over the curbside next to the parking lot in question, an area that it is foreseeable that people would be required to step on upon exiting a parked vehicle.

21. The injuries suffered by Mr. Klein on August 3, 2021, were proximately caused by the defendants' negligence, who failed to warn or otherwise alert the visitors and customers about the dangerous conditions existing within the premises of the parking lot, including those posed by the overgrown roots next to the parking place in which Mr. Klein parked.

23. ABC Insurance Company is directly liable to the plaintiff for the injuries that he sustained as result of the negligence and/or fault of its insureds, pursuant to Articles 20.010 and 20.030 of the Insurance Code of Puerto Rico, 26 L.P.R.A. §§ 2001 and 2003.

### **III. DAMAGES**

24. As a result of the acts, fault and negligence of the Defendants, Plaintiff has suffered, and will continue to suffer in the future, excruciating pain and mental anguish and is permanently impaired.

25. As a result of the acts, fault and negligence of the Defendants, Plaintiff has suffered and will continue suffering in the future excruciating pain and mental anguish in the amount of **SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00)**, for which the Defendants are jointly and severally liable.

26. As a result of the acts, fault and negligence of the Defendants, Plaintiff has suffered a loss of income more than \$10,000.00, as well as medical expenses exceeding \$25,000.00.

27. The defendants have incurred in obstinacy, for which reason they are not only liable for the payment of the principal prayed herein, but also for the payment of prejudgment interest and attorneys' fees.

#### **IV. JURY DEMAND**

28. Plaintiff demands trial by jury on all issues so triable.

**WHEREFORE**, it is very respectfully requested that this Honorable Court grant Plaintiff's Complaint and enter judgment for the above claimed amounts on his behalf, plus costs, disbursements, and a reasonable sum for attorneys' fees.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 29<sup>th</sup> day of November, 2021.

**I HEREBY CERTIFY:** That on November 29, 2021, I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system.

**s/ Richard Schell-Asad**

Richard Schell-Asad - Bar No. 203207

**s/ José M. Carreras-Pérez**

José M. Carreras-Pérez – Bar No. 212403

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